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Letter dated 24 October 2018 from the Permanent Representative of Namibia to the United Nations addressed to the President of the Security Council

I should be grateful if you would have the present letter and its annex, a letter from the Representative of the Frente POLISARIO at the United Nations, Sidi Omar, containing the views of the Frente POLISARIO on the questions raised by the Secretariat of the United Nations regarding the ceasefire and related agreements in implementation of Security Council resolution 2414 (2018) (see annex), issued as a document of the Security Council.

(*Signed*) Neville **Gertze**
Ambassador
Permanent Representative

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Annex to the letter dated 24 October 2018 from the Permanent Representative of Namibia to the United Nations addressed to the President of the Security Council

Upon instructions from my authorities, and in reference to the note verbale dated 31 July 2018 addressed to me by the Secretariat of the United Nations, I have the honour to transmit herewith to the latter a document containing the views of the Frente POLISARIO on the questions raised by the Secretariat of the United Nations regarding the ceasefire and related agreements (see enclosure).

(*Signed*) Sidi M. **Omar**
Representative of the Frente POLISARIO at the United Nations

Enclosure

THE VIEWS OF THE FRENTE POLISARIO ON THE QUESTIONS RAISED BY THE SECRETARIAT OF THE UNITED NATIONS REGARDING THE CEASEFIRE AND RELATED AGREEMENTS

INTRODUCTION

1. Despite the repeated and unjustified delays of the self-determination referendum for which MINURSO was established in 1991 as well as Morocco's well-documented obstructionism and blatant defiance of Security Council resolutions, the Frente POLISARIO has consistently respected the terms of the ceasefire and related agreements. Moreover, it has engaged constructively in the UN peace process as called for by the Security Council to ensure the right of our People to self-determination and independence.

2. For the past 27 years, Morocco has not only obstructed the full implementation of the Settlement Plan for Western Sahara, which was accepted by both parties, the Frente POLISARIO and Morocco, and approved by the Security Council. It has also engaged in sustained illegal annexationist policies and actions to alter the status quo in the territories of Western Sahara under its military occupation and over which the UN does not recognise any Moroccan sovereignty or administering jurisdiction.

3. Morocco's annexationist practices include, *inter alia*, reinforcing its military presence in the Territory in flagrant contravention of International Law and existing legal agreements concluded under the UN auspices; constructing military barracks, airports, ports and other infrastructures designed to entrench the occupation; holding elections and organising conferences such as Crans Montana Forum in the occupied city of Dajla (Dakhla); transferring thousands of Moroccan settlers to the Territory to change the latter's demographic nature and administrative configuration in contravention of the rules of International Humanitarian Law; and plundering the natural resources of the Territory against the will of its people and in violation of their right to permanent sovereignty over their resources.

4. In the framework of its annexationist policy, in August 2016 Morocco sought to change unilaterally the status quo in the Territory by constructing a road across its military wall and the buffer strip in Guerguerat in Western Sahara in violation of the ceasefire agreement in place since 1991. The dangerous and provocative move, to which the Frente POLISARIO had to respond at the time in the face of the UN inaction, was a clear breach of the terms of the ceasefire and Military Agreement No. 1, and it remains the root cause of the current tension in the whole area.

5. In its resolution 2351 (2017) adopted on 28 April 2017, the Security Council recognised "*that the recent crisis in the buffer strip in Guerguerat raises fundamental questions related to the ceasefire and related agreements*" and encouraged "*the Secretary-General to explore ways that such questions can be resolved*" (OP 3). In line with Security Council resolution 2351 (2017), the UN Secretariat sent notes verbales to both parties on 2 June 2017 proposing to address these questions, including through the deployment of an expert mission to conduct in-depth consultations with the parties. As recognised by the UN Secretary-General in his report (S/2018/277) of 29 March 2018, the Frente POLISARIO accepted the proposal in June. In August, Morocco responded that Military Agreement No. 1 remained viable and a guarantee for the preservation of the ceasefire and, therefore, it considered the proposed mission "untimely" and "inappropriate" (S/2018/277;

para. 5). The Moroccan opposition to the deployment of the proposed UN expert mission demonstrated once again that Morocco was unwilling to address the causes underlying the crisis caused by Morocco itself when it sought to alter unilaterally the status quo in the buffer strip in Guerguerat in violation of the terms of the ceasefire and the related Military Agreement No. 1.

6. In the face of Morocco's opposition to the deployment of the proposed UN expert mission, instead of holding Morocco accountable for such uncooperative attitude, the Security Council reiterated its recognition "*that fundamental questions related to the ceasefire and related agreements remain*" and called upon "*the Secretary-General to interview the parties in an effort to better understand these issues*" (OP 9 of resolution 2414 (2018)).

7. On 31 July 2018, the Frente POLISARIO received a letter from the Secretariat of the United Nations in which the latter referred to resolution 2414 (2018) adopted by the Security Council on 27 April 2018. As a follow-up to paragraph 9 of resolution 2414 (2018), the UN Secretariat requested the views of the Frente POLISARIO on the following questions:

> 1. *What is the Frente POLISARIO's understanding of the ceasefire and related agreements?*
>
> 2. *What aspects of the ceasefire and related agreements would need to be adjusted?*

8. In view of the foregoing, the Frente POLISARIO emphasises the following elements that in their entirety constitute the Frente POLISARIO's reasoning and detailed views on the abovementioned two questions as well as its understanding of the ceasefire and related agreements.

1. UNDERSTANDING OF THE CEASEFIRE AND RELATED AGREEMENTS

9. With regard to the first question relating to "*what is the Frente POLISARIO's understanding of the ceasefire and related agreements*", the Frente POLISARIO underscores the following:

1.1 The ceasefire

10. The Frente POLISARIO is of the firm view that the UN-supervised ceasefire in Western Sahara cannot be understood and addressed without placing it in its proper context and comprehensive legally binding framework as mutually accepted by both parties and endorsed by Security Council relevant resolutions.

11. A key reference document establishing the context of the ceasefire is the report of the UN Secretary-General (S/21360) of 18 June 1990, which contains (Part I) ***Proposals by the Secretary-General of the United Nations and the current Chairman of the Assembly of Heads of State and Government of the Organisation of African Unity aimed at a settlement of the question of Western Sahara accepted in principle by the parties on 30 August 1988*** and (Part II) ***Implementation plan proposed by the Secretary-General pursuant to Security Council resolution 621 (1988) of 20 September 1988***.

12. In the general introduction of the abovementioned report, the Secretary-General pointed out that, "*On 11 August 1988, the Secretary-General of the United Nations and the Special Envoy of the then Chairman of the Assembly of Heads of State and Government of the Organization of African Unity (OAU) presented, in separate meetings, to the parties to the conflict in Western Sahara, namely Morocco and the Frente Popular para La Liberación de Saguia el-Hamra y de Río de Oro (Frente POLISARIO) a document ("the settlement proposals") containing proposals for a just*

and definitive solution of the question of Western Sahara in conformity with General Assembly resolution 1514 (XV) by means of a cease-fire and the holding of a referendum without military or administrative constraints to enable the people of Western Sahara, in the exercise of their right to self-determination, to choose between independence and integration with Morocco" (para. 1).

13. Regarding the ceasefire declaration, the Secretary-General underlined, in paragraph 11 of his report (S/21360), that "*In conformity with the relevant provisions of General Assembly resolutions 1514 (XV) and 40/50 and OAU resolution AHG/Res. 104 (XIX), the parties to the conflict in Western Sahara, Morocco and the Frente POLISARIO, undertake to end all acts of hostility and to abide scrupulously by the cease-fire to be declared by the Secretary-General of the United Nations, in consultation with the current Chairman of OAU, at a date and in accordance with the procedures set forth below.*"

14. In paragraph 20 of the report, the Secretary-General further pointed out that "*The Secretary-General of the United Nations, after consulting the Security Council, will appoint a United Nations observer group to be stationed in Western Sahara. The Observer Group [which will be responsible for supervising the cessation of hostilities and the application of the cease-fire] will be established and will function in accordance with the general principles applicable to United Nations peace-keeping operations*". Moreover, he underlined, in paragraph 21, that "*Morocco and the Frente POLISARIO undertake to co-operate fully with the Observer Group and to abide by and observe scrupulously the above cease-fire provisions*".

15. In its resolution 658 (1990), which was adopted unanimously on 27 June 1990, the Security Council approved "*the report of the Secretary-General, transmitted to the Council in accordance with resolution 621(1988) with a view to settling the question of Western Sahara, which contains the full text of the settlement proposals as accepted by the two parties on 30 August 1988 as well as an outline of the plan provided by the Secretary-General in order to implement those proposals*" (OP 2). The Council further called upon "*the two parties to cooperate fully with the Secretary-General of the United Nations and the current Chairman of the Assembly of Heads of State and Government of the Organization of African Unity in their efforts aimed at an early settlement of the question of Western Sahara*" (OP 3).

16. Following the submission by the Secretary-General of his report (S/22464) of 19 April 1991, the Security Council unanimously adopted resolution 690 (1991) on 29 April 1991 in which the Council approved "*the report of the Secretary-General, transmitted to the Council in accordance with resolution 658 (1990)*"; called upon "*the two parties to cooperate fully with the Secretary-General in the implementation of his plan as described in his report of 18 June 1990 and amplified in his report of 19 April 1991*"; and decided "*to establish, under its authority, a United Nations Mission for the Referendum in Western Sahara in accordance with the report of 19 April 1991*".

17. By a letter dated 8 July 1991 addressed to the President of the Security Council (S/22779), the Secretary-General informed the Council that, in accordance with paragraph 12 of his report of 18 June 1990 (S/21360), he had written to Morocco and the Frente POLISARIO on 24 May 1991, proposing that a formal ceasefire should commence on 6 September 1991, and that the two parties had accepted that date. By a letter dated 3 September 1991 addressed to the President of the Security Council (S/23008), the Secretary-General transmitted a note regarding the implementation of the ceasefire, while recalling that paragraph 20 of document S/21360 stipulated that the establishment and functioning of the Observer Group would be "*in accordance with the general principles applicable to United Nations peace-keeping operations*".

18. In the annexed ***note regarding the implementation of the cease-fire in Western Sahara***, the Secretary-General pointed out that "*1. In the context of the United Nations plan (S/21360 of 18 June 1990 and S/22464 of 19 April 1991), and bearing in mind the fact that the parties have accepted 6 September as the date of the cease-fire, the Secretary-General intends to deploy, as of that date, military observers to verify the cease-fire and the cessation of hostilities in the areas referred to below; 2. In the wake of recent developments, 10 observation posts have been selected at this stage for the deployment of some 10 observers: Aguenit, Awsard, Bir Lahlou, Mahbes, Meharrize, Mijek, Oum Dreyga, Smara, Tifariti, Zug*". By a letter dated 4 September 1991 (S/23009), the President of the Security Council informed the Secretary-General that the members of the Council endorsed his action and continued to support his efforts.

19. As accepted by both parties and endorsed by the Security Council, the ceasefire agreement between the Frente POLISARIO and Morocco came into effect at 0600 GMT on 6 September 1991. Ever since, the Security Council has consistently reaffirmed the need for full respect for the military agreements reached with MINURSO with regard to the ceasefire.

20. **It is important to underline that, at the time of the coming into effect of the ceasefire, the Territory of Western Sahara legally remained one unified Territory, and the ceasefire agreement was in no way meant to change, alter or otherwise affect the internationally recognised boundaries of the Territory**. This fact was further reaffirmed in the Secretary-General's report (S/1997/742) of 25 September 1997, where **annex II** of the report refers to the ***results of the third round of direct talks*** held in Lisbon, Portugal, on 29 August 1997, and details the terms of the ***compromise agreement on troop confinement*** as agreed by both parties. In paragraph 3 of the compromise both parties agreed that "***This compromise shall in no way change, alter or otherwise affect the internationally recognized boundaries of Western Sahara, and shall not serve as precedent for any argument that such boundaries have changed or been altered***". In its resolution 1131 (1997) of 29 September 1997, the Security Council, *inter alia*, *welcomed* the agreements reached between the parties recorded in the report of the Secretary-General and *urged* "***the parties to continue this cooperation by fully implementing the said agreements and the Settlement Plan***".

21. Prior to the entry into force of the ceasefire on 6 September 1991, however, the existing state of affairs (*status quo ante*) on the ground consisted in the Territory being divided by a 2700 km military wall — lined with over seven million landmines — built by Morocco in the late eighties, with Morocco occupying the western part (General Assembly resolutions 34/37 and 35/19 of 21 November 1979 and 11 November 1980 respectively), while the eastern part being liberated and under the full control of the Frente POLISARIO.

22. The Moroccan military wall (sand wall) was therefore taken as a *de facto* line of separation between the Sahrawi and Moroccan armies pending the full implementation of the Settlement Plan and the holding of the self-determination referendum to determine the final status of the Territory. This was the status quo on the basis of which the ceasefire was accepted by the two parties, and in line of which the United Nations proceeded to establish, as agreed with both parties, the team sites where the military observers of MINURSO would be stationed.

23. It is also important to underline that, since the entry into force of the ceasefire in 1991, the Frente POLISARIO has been administering and developing the Sahrawi Liberated Territories under its control. The military regions and units of the Sahrawi Liberation Army (SPLA) had already been present in Western Sahara since the start of the liberation war in 1973 against Spanish colonial presence, and they have

continued to do so after Morocco's occupation of the Territory in October 1975. Obviously, had the Sahrawi Army not been present, as an undisputed fact, in those areas at the time, there would have been no reason for the ceasefire agreement initially.

24. The Frente POLISARIO has also built vital infrastructure (such as hospitals, schools and water sources, etc.) for the inhabitants of those areas who live in localities spread across the entire Liberated Territories. **For the past 27 years, the units of the Sahrawi Army have also been responsible for providing security day and night and other services when necessary for the MINURSO team sites in those regions. No incident or serious threat to the security of the UN observers in those areas has ever taken place**. The protection task performed by Sahrawi military units, which take place in a vast and arid area, represents the strong commitment of the Frente POLISARIO to the UN peace process since its inception to date.

25. In this regard, the Frente POLISARIO cannot but highlight the persistent practices carried out by Morocco in relation to MINURSO in the occupied territories of Western Sahara, which seriously undermine the credibility, impartiality and functionality of the Mission. These include the fact that MINURSO vehicles still operate with Moroccan licence plates and that Morocco continues affixing its stamps on the passports of MINURSO personnel upon their entry to and exit from Western Sahara, the mission area, in addition to the fact that the Mission does not have any human rights monitoring capacity. The Secretary-General himself has often referred to this issue. In his report (S/2015/246) of 10 April 2015, he noted that "*The perception of MINURSO and United Nations impartiality continues to be affected by the fact that MINURSO vehicles operate with Moroccan licence plates west of the berm*" (para. 40).

26. In this context, the Frente POLISARIO draws attention to the letter addressed to both parties on 25 June 2015 by the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel in which he underlined that "***the practice of stamping the laissez-passers and national passports of MINURSO personnel by either party contravenes the letter and spirit of the long-established practices***", and requested that "***this practice not be pursued***".

27. In a letter dated 9 August 2015, the Frente POLISARIO again drew attention to Morocco's entry procedures as well as its requirement that MINURSO vehicles carry Moroccan licence plates and that mail destined for Sahrawi localities under Moroccan occupation be addressed to Morocco, not Western Sahara, **as violations of the status of the Territory as a Non-Self-Governing Territory**. The Frente POLISARIO called for these and other colonial practices to be brought to an end to restore the credibility of the United Nations and confidence in its neutral role in Western Sahara. In his report to the Security Council of 19 April 2016 (S/2016/335), the Secretary-General noted the "*longstanding issue of MINURSO vehicles operating with Moroccan license plates west of the berm*" (para. 49) and referred to the letter addressed to both parties by the Under-Secretary-General for Legal Affairs of 25 June 2015.

28. Despite the assurances given to the Frente POLISARIO by the UN Department of Peacekeeping Operations (DPKO) that "*these issues have been formally and repeatedly raised with the Moroccan authorities, and that the Secretariat will spare no efforts in continuing to address the matter with the Moroccan authorities and the Security Council alike... until compliance with these customary principles and practices is achieved*",[1] Morocco to date continues to pursue these unacceptable

[1] See, *inter alia*, the letter addressed to H.E. Mr Brahim Ghali, Secretary-General of the Frente POLISARIO, by Mr Hervé Ladsous, UN Under-Secretary-General for Peacekeeping Operations, dated 30 December 2016.

practices. **For MINURSO to restore its credibility and impartiality, the Secretariat of the United Nations and the Security Council should ensure that these practices are brought to an end without further delay. They should also ensure that MINURSO operates in line with basic standards and general principles applicable to UN peacekeeping operations as provided for in the Settlement Plan**.

29. In view of the foregoing, the Frente POLISARIO emphasises that the ceasefire remains a fundamental element of an integrated package deal, namely the Settlement Plan, as proposed jointly by the UN and the OAU and accepted by both parties to the conflict and endorsed by the Security Council in its abovementioned resolutions and actions on the matter. For this reason, it cannot be understood or its implementation aspects be addressed outside its proper context and comprehensive legally binding framework as defined by the very terms and purpose of the mutually agreed Settlement Plan.

30. **The Frente POLISARIO, therefore, believes strongly that what is really at stake is not a matter of "understanding", interpreting or adjusting the existing ceasefire agreement and related agreements. It is essentially a matter of adhering to and respecting fully, rigorously and scrupulously the letter and spirit of all military agreements accepted mutually and officially by both parties and approved by the Security Council as contained in the relevant reports of the UN Secretary-General on the matter, including all military agreements reached with MINURSO with regard to the ceasefire**. The integrity and terms of the military agreements as accepted mutually by the two parties to the conflict and endorsed by the Security Council should therefore be safeguarded against any attempt to alter or adjust them unilaterally.

1.2. Military Agreement No. 1

31. As a complementary and integral document to the ceasefire, a military agreement (Military Agreement No. 1) was signed between the Frente POLISARIO Military Forces and MINURSO in December 1997 and between the Royal Moroccan Army and MINURSO in January 1998. The agreement lays down specific guidelines and procedures to be followed by both parties to the conflict in the framework of the implementation of the ceasefire. As a key document regulating the activities related to the UN monitoring of the ceasefire, Military Agreement No. 1 also specifies the rights of MINURSO military observers and the procedures to be followed in the event of a ceasefire violation.

32. As set out in the document detailing the Agreement, "*this is an agreement between the Royal Moroccan Army (RMA) and MINURSO on the one hand and the Frente POLISARIO Military Forces (FPMF) and MINURSO on the other hand*" (para. 1.1). The document further specifies that the purpose of the agreement "*is to lay down the guidelines and procedures to be followed by both parties to the conflict, the RMA and the FPMF, in the framework of the implementation of the cease-fire, which came into effect on 6 September 1991, in order to ensure that no type of hostility is resumed*" (para. 1.3).

33. In terms of its "***geographical definitions***" (para. 2), the document specifies that "*In the framework of this agreement and in order to reach a better understanding, the following definitions are taken for granted*:

> *Buffer Strip (BS): It covers a width of 5 km and runs all along the berm, to the South and East of this line. The berm is not included in the BS.*
>
> *Restricted Areas (RA): These are two 30 km wide areas, located to the North and the West of the berm for the first area, to the South and East of the berm for*

the second. The berm is included in the first RA and the buffer strip in the second RA.

Areas with Limited Restrictions (ALR): They are the stretches of land respectively located on the Northern and Western side of the first restricted area, and on the Southern and Eastern side of the second restricted area".

34. As regards the "***restrictions on military activities within the areas***" (para. 3), the document points out the following:

"3.1. Buffer Strip (BF): The entry of RMA and FPMF personnel or equipment, by ground or air, and the firing of weapons in or over this area, is prohibited at all times and is a violation.

3.2. Restricted areas (RA)

3.2.1. The following actions are prohibited in the RA and constitute a violation:

- *Firing of weapons and/or conducting military training exercises, with the exception of physical training activities of unarmed personnel.*
- *Tactical reinforcement, redeployment or movement of troops, HQs/units, stores, equipment, ammunition and weapons, with the exception of the movement of troops who are to go to their ALR to take part in manoeuvres and firing exercises.*
- *Entry of military fighter, training and air reconnaissance aircraft, as well as aerial surveillance. An exception will be made for helicopters used for medical evacuations, VIP liaisons and maintenance flights, providing always that MINURSO be informed in advance or, if this was not possible, at the earliest.*[2]

3.3. Areas with Limited Restriction (ALR)

All normal military activities can be carried out in the ALR with the exception of the reinforcement of existing minefields, the laying of mines, the concentration of forces, the construction of new HQs, barracks and ammunition storage facilities. The RMA and FPMF will also inform the commander of MINURSO if they intend to conduct military exercises in these areas, including the firing of weapons of a calibre above 9mm".[3]

35. These are the terms of Military Agreement No. 1 as it was accepted and signed by both parties and MINURSO, and hence the guidelines and procedures contained therein are of compulsory implementation for all stakeholders in the framework of the abovementioned ceasefire agreement.

36. In his report (S/1998/35) of 15 January 1998, the Secretary-General informed the Security Council of the conclusion of Military Agreement No. 1 between the two parties and MINURSO. In paragraph 18 of his report, the Secretary-General pointed out that "*After extensive consultations, the Force Commander reached a new military agreement with the two parties, which covers the present period until the start of the transitional period under the settlement plan. The agreement lays down guidelines and procedures to be followed by both the Royal Moroccan Army and the Frente POLISARIO forces in the framework of the ceasefire, to ensure that no hostility of any type is resumed. Any violations of the agreement as well as actions contrary to the spirit of the settlement plan are to be reported to higher authorities*".

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[2] Paragraphs 3.2.2 and 3.2.3 of the document specify the actions that are prohibited without prior approval by MINURSO military authorities.

[3] The document also contains items relating to "rights of the Military Observers", "Procedure in case of violation" and "Transmission of the agreement" as set out in paragraphs 4, 5 and 6 respectively.

37. Ever since Military Agreement No. 1 was signed by the two parties and MINURSO, **the Security Council has consistently reaffirmed the need for full respect for the military agreements reached with MINURSO with regard to the ceasefire**. In particular, in its latest resolution 2414 (2018) of 27 April 2018, the Security Council reaffirmed "***the need for full respect of the military agreements reached with MINURSO with regard to the ceasefire***" and called on "***the parties to adhere fully to those agreements***" (OP 6).

38. The Secretary-General has also been informing the Security Council of any violations related to Military Agreement No. 1 and the ceasefire. In his report (S/2008/251) of 14 April 2008, for instance, the Secretary-General informed the Security Council that "*The military component of MINURSO continued to monitor the ceasefire, which has been effective since 6 September 1991, in accordance with military agreement No. 1 between the Royal Moroccan Army and MINURSO, on the one hand, and the Frente Polisario military forces and MINURSO, on the other. The military agreements divide Western Sahara into five areas, including a five-kilometre-wide buffer strip east of the berm, two restricted areas (25 kilometres east and 30 kilometres west of the berm) and two areas of limited restriction that encompass the remainder of Western Sahara. Differing restrictions on military activities and personnel apply in these areas*" (para. 15).

39. Because of the lack of a strong response from the United Nations and the international community regarding the annexationist policies of Morocco in Western Sahara, referred to above, the occupying power has continued to behave with impunity while trying to extend its illegal annexation to the Sahrawi territories to the south and east of its military wall. A prime example in this context was Morocco's attempt to change unilaterally the status quo and impose a *fait accompli* in the Territory on 11 August 2016 by constructing a road across the buffer strip in Guerguerat in Western Sahara.

40. To understand its origin and ramifications, the crisis in Guerguerat should be placed in its context, particularly against the background of the attempt by the Moroccan military authorities to construct an asphalted road across the buffer strip in Guerguerat in March 2001 in violation of the ceasefire and Military Agreement No. 1. In his report (S/2001/398) of 24 April 2001, the Secretary-General pointed out that "*On 15 March 2001, MINURSO was informed by* ***the Moroccan military authorities of plans to begin construction of an asphalted road at the south-western corner of Western Sahara, across the 5-km buffer strip and into Mauritania near Nouadhibou***" (para. 4). He further informed that "*My Special Representative, Mr William Eagleton and the Force Commander, General Claude Buze warned their Moroccan civil and military contacts that* ***the proposed road building raised sensitive issues and involved activities that could be in violation of the ceasefire agreement***" (para. 5).

41. In his report (S/2001/613) submitted to the Security Council on 20 June 2001, the Secretary-General informed again that "*In my last report I indicated that preparations by the Moroccan military authorities for the construction of an asphalted road in the Guerguerat area of Western Sahara, at the south-western corner of the Territory, had been suspended at the request of MINURSO (S/2001/398, para. 4)*" (para. 8). In paragraph 15 of the report, however, the Secretary-General pointed out that "*On 28 April 2001, a MINURSO air reconnaissance patrol reported preparatory work by a civilian company for the beginning of construction of a portion of a road in the Guerguerat area (S/2001/398, paras. 4 and 5)* [...] *Subsequent MINURSO observation of the site confirmed the suspension of the work and, subsequently, the withdrawal of road construction equipment from the area*" (para. 15). Furthermore, in early 2002, in his report (S/2002/178) of 19 February 2002, the Secretary-General pointed out that "*As the Council will recall, in April and*

May 2001, Moroccan military authorities had begun preparations for the construction of an asphalted road in the Guerguerat area of Western Sahara, at the south-western tip of the Territory, towards the Mauritanian border. Morocco subsequently suspended this activity at the request of several Member States and MINURSO" (para. 11).

42. The above-cited paragraphs of the Secretary-General's reports reveal very clearly the origin of the current crisis in Guerguerat, and how the Security Council and MINURSO would act every time Morocco sought to go on with the construction of an asphalted road across the buffer strip. They also establish very clearly that the proposed road building raised sensitive issues and involved activities that could be in violation of the ceasefire agreement. The current crisis in Guerguerat cannot therefore be understood and dealt with outside this broader context and against the background of the new attempt by the Moroccan military authorities in 2016 to go on with the construction of an asphalted road across the buffer strip in Guerguerat. As was made clear in 2001, the construction of any road, asphalted or otherwise, across the buffer strip is — as it was then in 2001 — a violation of the ceasefire and Military Agreement No. 1. It is for this reason, and in view of the UN inaction, that the Frente POLISARIO was left with no other option but to respond to this unilateral, destabilising and dangerous action, which threatened to torpedo the most sensitive pillar that has thus far allowed for maintaining a peaceful situation on the ground, namely the ceasefire and related agreements.

43. In the meantime, the Frente POLISARIO called for urgent UN action to uphold the ceasefire agreement, recalling that, since 11 August, Moroccan forces in Western Sahara had repeatedly crossed the Moroccan military wall in Guerguerat in defiance of Military Agreement No. 1. The Frente POLISARIO underlined that the action "***represented a dangerous precedent aimed at undermining the mandate of the mission and a blatant and serious affront to the decisions and competences of the UN Security Council.***"[4] In particular, the Frente POLISARIO urged the Security Council to call for the immediate cessation of the work undertaken by Morocco and requested MINURSO to install an observation post in the area to calm the situation, while urging the Mission to report, on a timely basis, to the Security Council in accordance with its mandate to monitor the ceasefire. However, despite the repeated calls from the Frente POLISARIO on the Security Council to take action and ensure the integrity of the ceasefire and Military Agreement No. 1, no action was taken in this regard.

44. When Morocco started constructing the road in 2001, the United Nations responded by stressing that the construction of the road "***raised sensitive issues and involved activities that could be in violation of the ceasefire agreement***". In this context, the purported "commercial traffic" that circulates these days through the crossing point made by Morocco through the buffer strip in Guerguerat **is a clear violation of the ceasefire and Military Agreement No. 1**. The crossing point was not negotiated between the two parties, and the Frente POLISARIO did not approve it. Moreover, the "commercial traffic" passes without control and customs inspection through a territory under the full control of the Frente POLISARIO since 1991 as per the ceasefire agreement, and over which the UN does not recognise any Moroccan sovereignty or administering jurisdiction.

45. In this regard, the Frente POLISARIO emphatically underscores that, upon the entry into force of the ceasefire in 1991, there was no crossing point in Guerguerat or in any other area along the Moroccan military wall. Furthermore, neither the ceasefire agreement of 1991 nor Military Agreement No. 1 of 1997 included any provision

[4] See the letter addressed by H.E. Mr Brahim Ghali, Secretary-General of the Frente POLISARIO, to Mr Ban Ki-Moon, Secretary-General of the United Nations, dated 15 August 2016.

providing for opening crossing points for commercial traffic or the like along the Moroccan military wall. **In particular, on the day when the ceasefire came into effect on 6 September 1991, there was no road, asphalted or otherwise, nor was there any commercial traffic passing through the Sahrawi Territory under the control of the Frente POLISARIO towards the Mauritanian border**. The existence of a crossing point through which alleged "commercial traffic" passes across the buffer strip alters unilaterally and seriously the status quo and undermines the very concept and rationale of the ceasefire and related Military Agreement No. 1.

46. For the Frente POLISARIO, the crisis in the buffer strip in Guerguerat, therefore, is only another episode of the Moroccan destabilising strategy vis-à-vis the UN peace process in Western Sahara. It is well known that Morocco has been engaged in a "war of attrition" in its attempt to undermine not only the mandate and functionality of MINURSO, as demonstrated in March 2016, but also the mutually agreed terms and basis on which the ceasefire agreement and related military agreements have been reached with the United Nations and MINURSO.

47. In an interview with the French Magazine *Jeune Afrique* (N° 2992 of 13-19 May 2018), the Moroccan Foreign Minister claimed that the Security Council "*elle rétablit la suprématie de l'accord de cessez-le-feu de 1991 sure les accords militaires conclus plusieurs années plus tard, mais que la Minurso avait tendance à sacraliser et à prendre comme unique référencée*"[5] (page 49). The Moroccan statement clearly defies Security Council resolution 2414 (2018) in which the Council *reaffirmed* "*the need for full respect of the military agreements reached with MINURSO with regard to the ceasefire*" *and called on* "*the parties to adhere fully to those agreements*" (OP 6). It also contradicts Morocco's own position regarding Military Agreement No. 1, which was communicated to the UN Secretariat in August 2017, whereby Morocco stated that "*Military Agreement No. 1 remained viable and a guarantee for the preservation of the ceasefire*" (S/2018/277; para. 5).

48. In March 2016, in the area near Guelta Zemmur, inside the buffer strip, Moroccan troops shot and killed, at about 6 o'clock in the late afternoon, a Sahrawi civilian named Ashmad Djuli who, while following on foot the tracks of his cattle, had entered the buffer strip. Two of his relatives who tried to help him came under fire from the Moroccan soldiers. Unable to move, he bled to death. The Forces of the Frente POLISARIO, out of respect for the restricted zone, could not come to his aid. MINURSO said that it could not overfly the area to help him because it was already night time. They found him dead the next day. The Moroccan soldiers have also killed hundreds of camels belonging to Sahrawis in the areas adjacent to the Moroccan military wall. Moreover, Morocco has rejected the opening of any overland crossing points for expediting the family visits supervised by the UNHCR. **In view of all this and the fact that Morocco illegally prevents the presence of Sahrawi civilians in the buffer strip and the adjacent areas under penalty of death, it is then indefensible and unacceptable by all standards to allow Moroccan troops and civilians to be present in and/or cross the buffer strip at any point along the Moroccan military wall, be it for commercial purposes or otherwise**.

49. **The Frente POLISARIO thus warns against the very dangerous approach advanced by some quarters in an attempt to "normalise" the occupation and annexation of Western Sahara where the colonial and annexationist practices of the occupying power, Morocco, seem to raise no questions as to the legality of those practices, as if the final status of the Territory had been determined in some way**. In this regard, the Frente POLISARIO further warns that treating Morocco's

[5] "*It restores the supremacy of the 1991 ceasefire agreement over the military agreements concluded several years later, but MINURSO would tend to make them sacred and take them as a sole reference*". Unofficial translation.

attempts at furthering its annexationist policies in Guerguerat and any other Sahrawi areas as a "frequent, routine and regular" practice can only lead to encouraging the occupying power to persist in its illegal annexation of parts of the Territory of Western Sahara, which remains a Non-Self-Governing Territory under the responsibility of the United Nations.

50. In view of the above, the Frente POLISARIO underlines that the United Nations and the Security Council must not treat the crisis caused by Morocco in Guerguerat in August 2016 as a stand-alone isolated incident. Rather the situation was the result of the accumulation of several serious developments that the Secretariat of the United Nations and the Security Council could have dealt with in an effective and robust manner. **The hesitation of the Council to respond swiftly and decisively to the eviction by Morocco of MINURSO personnel in March 2016, which seriously compromised the capacity of the Mission to perform its mandate as established by the Security Council, and the Guerguerat incursion clearly emboldened Morocco and reinforced its view that its defiance could go on unchallenged**. The situation is also symptomatic of a stalled UN political process and of decades' long deliberate obstruction, obstinacy and refusal by Morocco to implement Security Council and General Assembly resolutions on Western Sahara. Morocco openly declared its unwillingness to go forward with the Settlement Plan, rejected and continues to reject all negotiation efforts, and violates with impunity the human rights of the Sahrawi people and plunders the natural resources of the Territory.

51. Therefore, the crisis in Guerguerat affects not only the situation in the buffer strip but also the very basis on which the peace process, including the ceasefire and Military Agreement No. 1, had been agreed by both parties and endorsed by the Security Council. **Addressing it effectively will thus entail a comprehensive approach that looks into the underlying causes of the crisis and its implications for the UN peace process and the existing military agreements that sustain the status quo in the Territory and the political process as a whole**.

2. ASPECTS OF THE CEASEFIRE THAT WOULD NEED TO BE ADJUSTED

52. As regards the second question relating to *"what aspects of the ceasefire and related agreements would need to be adjusted?"*, **the Frente POLISARIO, and bearing in mind the above, underscores that what all aspects of the ceasefire and related agreements need for the time being is primarily strict and scrupulous implementation, not adjustment or modification**.

53. In this regard, the Frente POLISARIO recalls that, according to international mine action organisations, the Territory of Western Sahara remains one of the most heavily mined areas in the world. It is estimated that there are more than 7 million landmines throughout the Territory in addition to large quantities of explosive remnants of war and cluster munitions. Most of the landmines are buried along the Moroccan military wall, especially in the area that is southeast of the wall, which is considered the largest continuous minefield in the world. The destructive force of landmines affects directly the Sahrawi population, on both sides of the wall, who usually suffers injuries, amputations and death from accidents related to landmines and explosive remnants of war. It is therefore imperative and very urgent that more focused efforts are made and more resources are allocated to address effectively the scourge of landmines in the whole Territory.

CONCLUSIONS

54. Bearing in mind the above, the Frente POLISARIO emphasises the following conclusions:

I. For the Frente POLISARIO, the ceasefire is an integral part of a package deal, namely the Settlement Plan of 1991, which was accepted officially by both parties, the Frente POLISARIO and Morocco, and endorsed by the Security Council in its relevant resolutions on the matter.

II. As an integral part of the Settlement Plan, the ceasefire agreement cannot be understood as a separate arrangement or an end in itself, but rather as a fundamental element and a preliminary stage in a phased peace plan whose ultimate aim, as mutually accepted by both parties and approved by the Security Council, is to achieve "*a just and definitive solution of the question of Western Sahara in conformity with General Assembly resolution 1514 (XV) by means of a cease-fire and the holding of a referendum without military or administrative constraints to enable the people of Western Sahara, in the exercise of their right to self-determination, to choose between independence and integration with Morocco*" (para. 1 of S/21360 of 18 June 1990).

III. The ceasefire and related agreements remain the fundamental pillar sustaining the ongoing UN peace process and the status quo in Western Sahara pending the determination of the final status of the Territory through the exercise by the Sahrawi people of their inalienable right to self-determination and independence as called for in General Assembly and Security Council relevant resolutions.

IV. In terms of the situation on the ground, in addition to the provisions of the Settlement Plan of 1991 and Houston Agreements of 1997, which were officially accepted by both parties and endorsed by the Security Council, the ceasefire and related agreements remain the main pact binding on both parties and the United Nations. In this regard, all stakeholders should comply scrupulously with their respective obligations, and no double standards or exception should be made as to the conduct of the two parties in relation to the ceasefire and Military Agreement No. 1.

V. The Frente POLISARIO warns that any attempt to undermine in any way or form the ceasefire and related agreements would be seriously perilous for the UN peace process and for the prospects of the initiatives that the Personal Envoy of the Secretary-General, Mr Horst Köhler, intends to make with a view to relaunching the peace process. In other words, any attempt to weaken, alter or modify unilaterally the existing ceasefire and related agreements and the attendant status quo in the Territory would be playing with fire that could have serious consequences for peace and security in the whole region.

VI. The Frente POLISARIO underscores the premise underlying the integrated peace plan of which the ceasefire and related Military Agreement No 1 are fundamental elements, which lies in the fact that the final status of the Non-Self-Governing Territory of Western Sahara is still to be determined through the exercise by its people of their inalienable right to self-determination and independence as called for in General Assembly and Security Council relevant resolutions.

VII. This entails recognising the fact that Morocco's presence in the so-called areas "west of the berm" does not have any internationally recognised legitimacy, and hence Morocco is simply an occupying power of the Territory as clearly established in General Assembly resolutions 34/37 and 35/19 of

21 November 1979 and 11 November 1980 respectively and other relevant resolutions. It also implies recognising that MINURSO is present in the Territory to carry out the explicit mandate with which it has been entrusted by the Security Council, namely the holding of a referendum on self-determination for the people of Western Sahara.

VIII. Failing to recognise this premise and the consequences derived from it has only encouraged the occupying power, Morocco, to continue behaving with impunity and trying to extend its illegal annexation to the liberated territories of our country, as if the final status of the Territory had already been determined. The Frente POLISARIO believes strongly that the United Nations should not mince words in its dealing with the situation on the ground in Western Sahara, and should therefore clearly and forcefully uphold the legal status of the Territory, and preserve its territorial integrity pending a definitive solution to the conflict. Indeed, if the final status of the Territory had already been determined — as Morocco claims and tries to impose — then there would be no UN political process at all and MINURSO would be serving no purpose in the Territory. The "deafening silence" attitude, therefore, is no longer tolerable because of the many issues that are at stake in terms of not only the UN credibility and the prospects of a peaceful and lasting solution to the conflict but also of regional peace and security.

IX. In the Frente POLISARIO's view, the terms of the ceasefire of 1991 and related Military Agreement No. 1 of 1997, which regulate the ceasefire between the Frente POLISARIO and Morocco, are clear and leave no room for selective interpretations or unilateral adjustments. Furthermore, in its latest resolution 2414 (2018) of 27 April 2018, referred to above, the Security Council reaffirmed "*the need for full respect of the military agreements reached with MINURSO with regard to the ceasefire*" and called on "*the parties to adhere fully to those agreements*" (OP 6).

X. The Frente POLISARIO, therefore, believes strongly that what is really at stake is not a matter of "understanding", interpreting or adjusting the existing ceasefire agreement and Military Agreement No. 1 in place since 1991 and 1997 respectively. It is essentially a matter of adhering to and respecting fully, rigorously and scrupulously the letter and spirit of all military agreements accepted mutually and officially by both parties and approved by the Security Council as contained in the relevant reports of the UN Secretary-General on the matter, including all military agreements reached with MINURSO with regard to the ceasefire. The integrity and terms of the military agreements as accepted mutually by the two parties to the conflict and endorsed by the Security Council should therefore be safeguarded against any attempt to alter or adjust them unilaterally.

XI. In this regard, the Frente POLISARIO calls on the Security Council to ensure strong adherence to and full respect for the terms of the ceasefire and related military agreements. The Security Council should also guarantee that MINURSO operates in line with basic standards and general principles applicable to UN peacekeeping operations, as officially agreed by both parties in the Settlement Plan, and approved by the Security Council in its relevant resolutions. The fact that MINURSO vehicles still have to bear Moroccan number plates and that Morocco keeps on affixing Moroccan stamps on the passports of MINURSO personnel upon their entry to and exit from Western Sahara, as referred to above, is indicative of an unacceptable state of affairs that undermines the impartiality and credibility of the Mission and the United Nations itself.

XII. In closing, the Frente POLISARIO reiterates its strong adherence to the terms of the ceasefire and Military Agreement No. 1, as mutually accepted by both parties and approved by the Security Council, as well as its full cooperation with the UN Secretary-General and his Personal Envoy, Mr Horst Köhler, in their efforts to relaunch the peace process with a new dynamic with a view to achieving a peaceful, just and lasting solution, which will provide for the self-determination of the people of Western Sahara.

Bir Lehlou, 22 August 2018